

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185799

DATE: AUG 18 1976

MATTER OF:

Colonel Walter Schreiber, COANG
Brigadier General Richard B. Posey, PANG

DIGEST:

A member of the National Guard who is ordered to active duty for a period of 50 days, which duty is later extended by amendment to his orders for an additional period of 89 days and, who later receives orders for an additional period of 125 days at the same place is entitled to per diem during such periods of active duty since the first two periods were for less than 20 weeks as prescribed by the applicable regulation and since the facts show that the additional period of active duty was not contemplated at the time the original order and the amendment thereto were issued.

This action is in response to a request dated December 23, 1975, from the Chief of Accounting and Finance Division, Directorate of Resource Management, Headquarters Air Force Accounting and Finance Center, Denver, Colorado, for a decision concerning the propriety of paying two reclaim vouchers for \$100 each submitted by Brigadier General Richard B. Posey, 201 05 8113, Pennsylvania Air National Guard and Colonel Walter Schreiber, 524 14 8632, Colorado Air National Guard for per diem in connection with their assignment on active duty as members of an Office of the Secretary of Defense study group. The request was assigned Control No. 76-2 and forwarded to this Office by Per Diem, Travel and Transportation Allowance Committee endorsement, dated January 19, 1976.

The file shows that the "OSD Total Task Force Study Group" was formed to study certain problems in relation to the National Guard and Reserve components. Due to the length of the projected assignment it was not considered possible to obtain volunteers to be ordered to active duty in accordance with 10 U.S.C. 672(d) (1970) for the entire study period. However, Colonel Schreiber was asked and he agreed to join the study group, for Phase I of the study. This was for a 50-day period, November 12 to December 31, 1973. Accordingly, Special Order Colo 57-AF, dated November 6, 1973,

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was issued ordering Colonel Schreiber to active duty for 50 days for the purpose of participating, as a National Guard representative, on the study group.

Documents in the file indicate that at the time Colonel Schreiber was ordered to active duty the only foreseeable period of such duty was the 50-day period or Phase I of the study. However, by Special Order Colo 61-AF, dated December 26, 1973, Colonel Schreiber's tour of duty was extended through March 29, 1974, for a total period of 139 days of active duty or 1 day less than 20 weeks.

Colonel Schreiber reverted to an inactive duty status on March 29, 1974, but by Special Order AA-19-CO, dated March 19, 1974, he was ordered to active duty for a period of 125 days (April 8 through August 11, 1974) with the study group. He served on active duty only through July 13, 1974.

Colonel Schreiber was paid per diem allowances during the periods of his active duty. However, based upon an opinion of the Air Force Judge Advocate General the Air Force Accounting and Finance Center took exception to the payment of any per diem beyond the original order for Phase I (November through December 1973) and initiated collection action for the per diem payments made thereafter. Colonel Schreiber made a token payment of \$100, under protest and filed a reclaim voucher for that amount.

The facts as they relate to General Posey are, in all pertinent respects, so similar to those in Colonel Schreiber's case that it is not considered necessary to set them out here.

The Air Force Accounting and Finance Center forwarded the reclaim vouchers of the two individuals to this Office for consideration. Determination of whether the reclaims may be allowed requires a determination as to whether all per diem payments after January 1, 1974, were proper.

Paragraph M6001 of Volume 1, Joint Travel Regulations (1 JTR), in force at the time in question, prescribed the travel allowances for a member of the Reserve components on active duty. Paragraph M6001-1, provided:

"ACTIVE DUTY WITH PAY

"a. General

"(1) Applicability. The provisions of this subparagraph and subpars. b, c, and d are applicable to members of the reserve components who are called (or ordered) to active duty for any reason with pay under orders which provide for return to home or place from which called (or ordered) to active duty."

Paragraph M6001-1c provided:

"Per Diem While at Duty Stations

"(1) Active Duty for Less Than 20 Weeks.
Except as provided in subpar. a(2) and (3), when the period of active duty contemplated by the orders at any location is for less than 20 weeks, per diem, travel, and transportation allowances, including miscellaneous reimbursable expenses, are payable at the same rates and subject to the same provisions and deductions as are provided for temporary duty in Chapter 4, Parts E, F, and I, as applicable.

"(2) Additional Periods Beyond 20 Weeks.
When, during a period of active duty of less than 20 weeks, the period of active duty must be extended due to unforeseen circumstances by an additional period of less than 20 weeks, per diem, travel, and transportation allowances, and miscellaneous reimbursable expenses payable will be continued for the entire period. When the prospective extended period involved is for a period of 20 weeks or more, no per diem will be payable under this subparagraph commencing on the date of receipt by the member of the extension order.

"(3) Active Duty for 20 Weeks or More

"(a) General. When a member is called to active duty for 20 weeks or more, no per diem

allowances are payable at any location where the duty to be performed is for 20 weeks or more regardless of the availability of Government quarters and Government mess."

It is the position of the Air Force Judge Advocate General that the active duty of Colonel Schreiber beyond Phase I, which encompassed the period November 12 through December 31, 1973, was a matter which was foreseeable and that paragraph M6001-1c(2), 1 JTR, therefore, prohibits the extension of per diem status beyond the original term of active duty.

The original period of active duty for Colonel Schreiber was for 50 days but that order was amended to include an additional 89 days (Phase II). Since the total temporary duty time under that order was 139 days per diem was payable for the full period of temporary duty unless the information provided shows that at the time the amendment was issued it was contemplated that Colonel Schreiber would be retained on that duty beyond March 29, 1974. In that connection we have been furnished information indicating that the periods of assignment of individuals assigned to the study group varied and that some individuals served only for Phase I, some served for Phase I and II, and some for Phase II and III. Other assignments were for all three phases. Also, various documents indicated that the Adjutant General of the Colorado National Guard did not intend for Colonel Schreiber to be away for such a long period but only agreed to his continued assignment beyond the 139 days covered by the first order as amended in March 1974. Similar documents have been furnished with respect to General Posey's case.

In view of all the information before us we are of the view that at the time Colonel Schreiber and General Posey were assigned to duty with the study group for 139 days it was not contemplated that their assignments to that group would be continued beyond that time period. Accordingly, per diem allowances for the periods of active duty were properly paid. Thus the reclaim vouchers should be allowed.

R. F. Keller

Deputy Comptroller General
of the United States